

REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Proposing rule making related to homestead tax credit and military service tax exemption and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 421.14, 425.8 and 426A.7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 425 and 426A and sections 22.7, 35.1 and 35.2.

Purpose and Summary

This proposed rule making is intended to clean up various provisions in existing rules related to the homestead tax credit and the military service tax exemption. In particular, this rule making defines “under honorable conditions” for purposes of the disabled veteran tax credit and the military service tax exemption, describes the application requirements for the disabled veteran tax credit, and describes the eligibility of a person who has received multiple discharges from service for the disabled veteran tax credit. This rule making also clarifies the language of existing subrules regarding the applicability of the homestead tax credit and the military service tax exemption to a shareholder of a family farm corporation, the applicability of the homestead tax credit to a person owning a homestead dwelling located upon land owned by another person or entity, and the Iowa residency requirement for a person claiming a military service tax exemption. Lastly, this rule making removes unnecessary citations.

Reason for Amendment of Notice of Intended Action

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2020, as **ARC 5104C**. No comments were received in response to the Notice of Intended Action. However, upon further review, the Department determined that certain amendments to Chapter 80 included in the Notice of Intended Action required further clarification. As a result, the Department added language to paragraphs 80.1(3)“b” and “d” and removed language from paragraph 80.1(3)“c.” These changes are meant to clarify that this rule making does not alter the eligibility requirements for the disabled veteran tax credit. The Department also determined that taxpayers would benefit from an explanation of the “under honorable conditions” language from Iowa Code section 35.1 as it pertains to the military service tax exemption. Therefore, a definition of “under honorable conditions” was added to this rule making as paragraph 80.2(2)“v.” Lastly, a typo was corrected in paragraph 80.2(2)“c.”

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 5104C**.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 27, 2020. Comments should be directed to:

Nick Behlke
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Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.336.9025
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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—80.1(425) as follows:

701—80.1(425) Homestead tax credit.

80.1(1) *Application for credit.*

a. No homestead tax credit shall be allowed unless the first application for homestead tax credit is signed by the owner of the property or the owner’s qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year. ~~(1946 O.A.G. 37)~~ Once filed, the claim for credit is applicable to subsequent years and no further filing shall be required provided the homestead is owned and occupied by the claimant or the claimant’s spouse on July 1 of each year and, in addition, the claimant or the claimant’s spouse occupies the homestead for at least six months during each calendar year in which the fiscal year for which the credit is claimed begins. It is not a requirement that the six-month period of time be consecutive. If the credit is disallowed and the claimant failed to give written notice to the assessor that the claimant ceased to use the property as a homestead, a civil penalty equal to 5 percent of the amount of the disallowed credit shall be assessed against the claimant in addition to the amount of credit allowed. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 425.3. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. to f. No change.

g. For purposes of the homestead tax credit statute, the occupancy of the homestead may constitute actual occupancy or constructive occupancy. However, more than one homestead cannot be simultaneously occupied by the claimant and multiple simultaneous homestead tax credits are not allowable. ~~(Op. St. Bd. Tax Rev. No. 212, February 29, 1980.)~~ Generally, a homestead is occupied by the claimant if the premises constitute the claimant’s usual place of abode. Once the claimant’s occupancy of the homestead is established, such occupancy is not lost merely because the claimant, for some valid reason, is temporarily absent from the homestead premises with an intention of returning thereto ~~(1952 O.A.G. 78)~~.

80.1(2) *Eligibility for credit.*

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually

occupy the homestead property on July 1 of each year. (~~1944 O.A.G. 26; Letter O.A.G. October 18, 1941~~)

b. No homestead tax credit shall be allowed if the homestead property is owned or listed and assessed to a corporation, ~~other than a family farm corporation~~, partnership, company or any other business or nonbusiness organization. (~~1938 O.A.G. 441; Verne Deskin v. Briggs, State Board of Tax Review, No. 24, February 1, 1972~~) However, a family farm corporation, as defined in Iowa Code section 9H.1, where a shareholder of the family farm corporation occupies a homestead, as defined in Iowa Code section 425.11(1), may receive the homestead tax credit.

c. A person acquiring homestead property under a contract of purchase remains eligible for a homestead tax credit even though such person has assigned ~~his or her~~ equity in the homestead property as security for a loan. (~~1960 O.A.G. 263~~)

d. A person occupying homestead property pursuant to Iowa Code chapter 499A or 499B is eligible for a homestead tax credit. (~~1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2~~)

e. A person who has a life estate interest in homestead property shall be eligible for a homestead tax credit, provided the remainderman is related or formerly related to the life estate holder by blood, marriage or adoption or the reversionary interest is held by a nonprofit corporation organized under Iowa Code chapter ~~504A~~. (~~1938 O.A.G. 193~~) 504.

f. A homestead tax credit may not be allowed upon a mobile home which is not assessed as real estate. (~~1962 O.A.G. 450~~)

g. A person occupying homestead property under a trust agreement is considered the owner of the property for purposes of the homestead tax credit. (~~1962 O.A.G. 434~~)

h. A remainder is not eligible to receive a homestead tax credit until expiration of the life estate to which such person has the remainder interest. (~~1938 O.A.G. 305~~)

i. In order for a person occupying homestead property under a contract of purchase to be eligible for a homestead tax credit, the contract of purchase must be recorded in the office of the county recorder where the property is located. A recorded memorandum or summary of the actual contract of purchase is not sufficient evidence of ownership to qualify a person for a homestead tax credit.

j. An owner of homestead property who is in the military service or confined in a nursing home, extended-care facility or hospital shall be considered as occupying the property during the period of service or confinement. The fact that the owner rents the property during the period of military service is immaterial to the granting of the homestead tax credit. (~~1942 O.A.G. 45~~) However, no homestead tax credit shall be allowed if the owner received a profit for the use of the property from another person while such owner is confined in a nursing home, extended-care facility or hospital.

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (~~1942 O.A.G. 160, O.A.G. 82-4-9~~) This rule is not applicable to a person owning a homestead dwelling pursuant to Iowa Code chapter 499B or a person owning a homestead dwelling on land owned by a community land trust pursuant to 42 U.S.C. Section 12773-, provided that such a person is liable for and pays property tax on the homestead as required under Iowa Code section 425.11(1) "e."

l. An heir occupying homestead property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the homestead credit. (~~1938 O.A.G. 272~~)

80.1(3) ~~Disabled veteran's homestead~~ veteran tax credit.

a. No change.

b. Under honorable conditions. A veteran, as defined in Iowa Code section 35.1, may qualify for the disabled veteran tax credit. In addition to the other requirements under Iowa Code section 35.1, to qualify as a veteran under Iowa Code section 35.1, an individual must have been discharged under honorable conditions from the armed forces of the United States, the reserve forces of the United States, the Iowa national guard, or the merchant marines. For purposes of benefits granted under Iowa Code section 425.15 and this rule, "under honorable conditions" means that the character of an enlisted member's discharge from the armed forces of the United States, the reserve forces of the United States, the Iowa national guard, or the merchant marines was "honorable" or "general (under honorable

conditions).” “Under honorable conditions” does not include any other character of discharge, including but not limited to:

- (1) Under other than honorable conditions;
- (2) Dishonorable;
- (3) Bad conduct;
- (4) Uncharacterized; or
- (5) A similar expression indicating that the discharge or release was not under honorable circumstances.

~~b. c.~~ *Application for credit.* ~~Except for the 2014 assessment year, an~~ A valid application for the disabled veteran tax credit is subject to all of the following requirements:

(1) An application for the disabled veteran tax credit must be filed with the local assessor on or before July 1 of the assessment year. Any supporting documentation required by the assessor as evidence of a veteran’s service-connected disability status or rating must be current within the previous 12 months of the date on which the application is filed. The filing deadline for applications for the 2014 assessment year shall be July 1, 2015. The credit applicable to assessment year 2014 shall be allowed only on a homestead which the owner occupied on July 1, 2014, and for at least six months during the 2014 assessment year.

(2) For persons applying for the disabled veteran tax credit under Iowa Code section 425.15(1) “a,” “b,” and “c,” a DD-214 (Certificate of Release or Discharge from Active Duty), or an equivalent document indicating the veteran’s type of separation and character of service, is required with an application for the credit to verify that the applicant meets the requirements of Iowa Code sections 425.15 and 35.1.

(3) For persons applying for the disabled veteran tax credit under Iowa Code section 425.15(1) “b” and “c,” a U.S. Department of Veterans Affairs Benefit Summary Letter (also known as a Veteran Affairs award letter) stating the veteran’s qualifying service-connected disability rating(s) is required with an application for the disabled veteran tax credit as certification of the veteran’s service-connected disability by the U.S. Department of Veterans Affairs. Where a veteran seeks eligibility as a result of a permanent and total disability rating based on individual unemployability, the Benefit Summary Letter must also indicate that the veteran is entitled to individual unemployability that is compensated at the 100 percent disability rate.

d. Multiple discharges. A person who has received a nonqualifying character of discharge may still qualify for the disabled veteran tax credit if it is established through the required documents under paragraph 80.1(3) “c” that the person has a service-connected disability that is related to the person’s service in the armed forces of the United States for which the person was discharged under honorable conditions, and the other requirements of Iowa Code section 425.15 and this rule are also met. In such a case, in addition to a DD-214, the applicant must include a DD-256 (Certificate of Honorable Discharge), a DD-257 (General Discharge Certificate), or an equivalent document from the relevant time of service with the application for the disabled veteran tax credit. The applicant’s Benefit Summary Letter must also indicate the applicant’s periods of service and each character of discharge.

~~e. e.~~ *Amount of credit.* The amount of the credit is equal to the entire amount of tax payable on the homestead.

~~f. f.~~ *Continuance of credit.* The credit shall continue to the estate or surviving spouse and child who are the beneficiaries of an owner described in subparagraph 80.1(3) “a”(1), (2), or (3) if the surviving spouse remains unmarried. If an owner or beneficiary of an owner ceases to qualify for the credit, the owner or beneficiary must notify the assessor of the termination of eligibility.

80.1(4) Application of credit.

a. Except as provided in paragraph 80.1(1) “a,” if the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit on or before July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year provided the previous owner was entitled to the credit. However, when the property is transferred as part of a distribution made pursuant to Iowa Code chapter 598 (Dissolution of

Marriage) the transferee spouse retaining ownership and occupancy of the homestead is not required to refile for the credit.

b. A homestead tax credit may be allowed even though the property taxes levied against the homestead property have been suspended by the board of supervisors. (1938 O.A.G. 288)

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

f. to h. No change.

This rule is intended to implement Iowa Code chapter 425 as amended by 2006 Iowa Acts, House File 2794.

ITEM 2. Amend rule 701—80.2(22,35,426A) as follows:

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) Application for exemption.

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 426A.14. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. to e. No change.

80.2(2) Eligibility for exemption.

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces, including members of the Coast Guard, who were on active duty for less than 18 months must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code Supplement section 35.1. If former members were on active duty for at least 18 months, it is not necessary that their service be performed during one of the war or conflict time periods. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty if the service was performed during one of the war or conflict time periods, nor is there a minimum number of days a former member of the armed ~~forced~~ forces of the United States must have served on active duty if the person was honorably discharged because of a service-related injury sustained while on active duty.

Former and current members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. With the exception of members of the Iowa national guard and members of the reserve forces of the United States who have served at least 20 years and continue to serve, a military service tax

exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission*, 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle*, State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. ~~However~~ Therefore, if the exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified but the individual enumerated in Iowa Code section 426A.12 claiming the exemption must be an Iowa resident. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is held until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, ~~except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1)~~, partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441) However, a family farm corporation, as defined in Iowa Code section 9H.1, where a shareholder of the family farm corporation occupies a homestead, as defined in Iowa Code section 425.11(1), may receive the military service tax exemption.

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 154) If property is solely owned by one spouse, the owner spouse may claim both exemptions on the property providing the nonowner spouse's exemption is not claimed on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. and u. No change.

v. Under honorable conditions. A veteran, as defined in Iowa Code section 35.1, may qualify for the military service tax exemption. In addition to the other requirements under Iowa Code section 35.1, to qualify as a veteran under Iowa Code section 35.1, an individual must have been discharged

under honorable conditions from the armed forces of the United States, the reserve forces of the United States, the Iowa national guard, or the merchant marines. For purposes of benefits granted under Iowa Code chapter 426A and this rule, “under honorable conditions” means that the character of an enlisted member’s discharge from the armed forces of the United States, the reserve forces of the United States, the Iowa national guard, or the merchant marines was “honorable” or “general (under honorable conditions).” “Under honorable conditions” does not include any other character of discharge including but not limited to:

- (1) Under other than honorable conditions;
- (2) Dishonorable;
- (3) Bad conduct;
- (4) Uncharacterized; or
- (5) A similar expression indicating that the discharge or release was not under honorable circumstances.

80.2(3) *Application of exemption.*

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (~~1938 O.A.G. 288~~)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (~~1956 O.A.G. 78~~)

e. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the exemption estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 22.7, 35.1, and 35.2 and chapter 426A.